MONTANA LEGISLATIVE HISTORY

Chapter 185 19 77

Bill H _____ S 5 Original bill & history ____C

H. Committee on Business & Industry		S. Committee on Business & Industry	
Hearing Date(s) Mar 04	✓ C	Hearing Date(s) Jan 08	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Mar 04	✓ C	Jan 08	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 5

INTRODUCED BY HAZELBAKER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CREDIT TRANSACTIONS AND RELATIONSHIPS; AMENDING 18-318, 18-403, 18-510, 18-515, 29-208, 30-106, 30-208, 30-407, 30-504, 30-505, 47-124, 66-1601, 66-1607, 74-604, 74-606, AND 74-611, R.C.M. 1947; AND REPEALING 29-207, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-318, R.C.M. 1947, is amended to read as follows:

"18-318. Assignment of real property. ~~Where~~ When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of ~~sections~~ 73-201 ~~to~~ through 73-205, as well as to those of this chapter."

Section 2. Section 18-403, R.C.M. 1947, is amended to read as follows:

"18-403. Exemptions. ~~This act~~ Section 18-402 shall not apply to:

(1) ~~Those~~ those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) ~~Banks~~ banks and fiduciaries~~--as~~ duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) ~~Title~~ title insurers and abstract companies, while doing an escrow business;

(4) ~~Judicial~~ judicial officers or others acting under court orders;

(5) ~~Nonprofit~~ nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) ~~Those~~ those situations involving debt adjusting incurred incidentally in connection with the lawful practice ~~as~~ of a certified public accountant;

(7) ~~Bona~~ bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) ~~Employers~~ employers for their employees;

(9) ~~Any~~ any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are ~~ten-per-cent-(10%)~~ of the amounts as paid by the debtor;

(10) ~~Any~~ any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in

adjusting the debts."

Section 3. Section 18-510, R.C.M. 1947, is amended to read as follows:

"18-510. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to ~~the effective date of the act~~ July 1, 1975, do not apply to existing consumer reporting agencies except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date."

Section 4. Section 18-515, R.C.M. 1947, is amended to read as follows:

"18-515. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information

contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within ~~sixty (60)~~ days after ~~learning~~ the consumer learned of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the

provisions of subsections (1) and (2)."

Section 5. Section 29-208, R.C.M. 1947, is amended to read as follows:

"29-208. Certain transfers presumed fraudulent. Every transfer of personal property, other than a thing in action, ~~or--a--ship-or-cargo-at-sea,-or-in-a-foreign-port,~~ and every lien thereon, other than a mortgage, when allowed by law, ~~and--a-contract-of-bottomry-or-respondentia,-is-conclusively presumed,-if~~ made by a person having at the time the possession or control of the property, ~~and~~ not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, is conclusively presumed to be fraudulent, and therefore void against:

(1) those who are his creditors while he remains in possession; ~~and~~

(2) the successors in interest of such creditors; ~~and~~ ~~against~~

(3) any persons on whom his estate devolves in trust for the benefit of others than himself; ~~and~~ ~~against~~

(4) purchasers or encumbrancers in good faith subsequent to the transfer."

Section 6. Section 30-106, R.C.M. 1947, is amended to read as follows:

"30-106. Acceptance of guaranty. A mere offer ~~to~~ of

guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance."

Section 7. Section 30-208, R.C.M. 1947, is amended to read as follows:

"30-208. What dealings with debtor exonerate guarantor. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, are in ~~anywise~~ any way impaired or suspended."

Section 8. Section 30-407, R.C.M. 1947, is amended to read as follows:

"30-407. Surety discharged by certain acts of the creditor. A surety is exonerated:

~~1.~~(1) ~~In~~ in like manner with a guarantor;

~~2.~~(2) ~~To~~ to the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

~~3.~~(3) ~~To~~ to the extent to which he is prejudiced by an omission of the creditor, when required by the surety, to do

anything~~--when--required-by-the-surety~~, which it is ~~his~~ the creditor's duty to do."

Section 9. Section 30-504, R.C.M. 1947, is amended to read as follows:

"30-504. ~~A--principal~~ Principal bound to reimburse ~~his~~ surety. If a surety satisfies the principal obligation~~y~~ or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what ~~he~~ the surety has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section."

Section 10. Section 30-505, R.C.M. 1947, is amended to read as follows:

"30-505. Surety's right of subrogation -- contribution from cosureties. A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what ~~he~~ the surety has expended~~y~~ and also to require all his cosureties to contribute thereto, without regard to the order of time in which they became such."

Section 11. Section 47-124, R.C.M. 1947, is amended to read as follows:

"47-124. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code~~:~~, ~~unless~~ unless

there is an express contract in writing~~y~~ fixing a different rate~~y~~ or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of ~~six-per-cent--(6%)--per annum~~ a year after they become due on:

(a) any instrument of writing, except a judgment~~y~~;

(b) ~~on~~ an account stated~~y~~;

(c) ~~and--on~~ moneys lent or due on any settlement of accounts from the date on which the balance is ascertained~~y~~; and

(d) ~~on~~ moneys received ~~to~~ for the use of another and detained from him.

(2) In the computation of interest for a period of less than ~~one-(1)~~ year, ~~three-hundred-and--sixty-five--(365)~~ days ~~are-deemed-to~~ constitute a year."

Section 12. Section 66-1601, R.C.M. 1947, is amended to read as follows:

"66-1601. Interest pawnbrokers may receive. No person ~~must-~~ ~~(may)~~ carry on the business of pawnbroker or junk dealer by receiving goods pawned~~y~~ or in pledge for loans~~y~~ at any rate of interest above ~~ten-per-cent--per--annum~~ 10% a year without first obtaining a license. ~~There-must-be-no other-or-greater-amount-received-by-any~~ A pawnbroker or junk dealer~~y~~ or ~~his~~ employees or agents~~y~~ may not charge more than 3% a month for interest, commission, discount, storage, or

and caring for property pledged~~, then the rate of three per cent per month.~~"

Section 13. Section 66-1607, R.C.M. 1947, is amended to read as follows:

"66-1607. ~~Penalties~~ Violation as misdemeanor. ~~The penalties for a~~ A violation of any of the provisions of this chapter ~~shall be~~ is a misdemeanor."

Section 14. Section 74-604, R.C.M. 1947, is amended to read as follows:

"74-604. Denial, suspension, or revocation of licenses. ~~(c)~~(1) Renewal of a license originally granted under ~~section~~ 74-603 may be denied, or a license may be suspended or revoked by the department on the following grounds:

~~(1)~~(a) ~~Material~~ material misstatement of fact in the application for license;

~~(2)~~(b) willful failure to comply with any provision of this act relating to retail installment contracts;

~~(3)~~(c) defrauding any retail buyer to the buyer's damage;

~~(4)~~(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

~~(b)~~(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation, or any member of a licensed partnership, has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

~~(c)~~(3) (a) A license may not be denied, suspended, or revoked, except after hearing. The department shall give the licensee at least ~~ten~~-~~(10)~~ days' written notice, in the form of an order to show cause, of the time and place of the hearing by ~~registered~~ certified mail addressed to the licensee's principal place of business in this state ~~of the licensee~~. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until ~~thirty~~-~~(30)~~ days after written notice has been forwarded by ~~registered~~ certified mail to the licensee at ~~the~~ his principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee."

Section 15. Section 74-606, R.C.M. 1947, is amended to read as follows:

"74-606. Powers of department. ~~(a)~~(1) The department shall adopt rules necessary to carry out the intent and purposes of this act. All rules of general application shall be filed in the office of the department. A copy of every rule shall be mailed to each licensee, postage prepaid, at least ~~fifteen--(15)~~ days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt him from the duty of compliance with those rules lawfully adopted under the provisions of this section.

~~(b)~~(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this act. The department may administer oaths and affirmations to a person whose testimony is required.

~~(c)~~(3) If a person refuses to obey a subpoena, or to give testimony, or to produce evidence as required by it, a judge of the district court of the county in which the

licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department ~~and~~ to give testimony, and ~~to~~ produce evidence as may be required ~~by--it~~. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

~~(d)~~(4) If a person served with a subpoena refuses to obey it, or to give testimony, or ~~to~~ produce evidence as required by it, the department may apply to the judge of the court issuing the subpoena for an ~~attachment against~~ arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an ~~attachment~~ arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person, and, upon his being brought before the judge, proceed to a hearing of the case. The judge may ~~enforce~~ compel:

(a) obedience to the subpoena, and

(b) the answering of any question, and

(c) the production of any evidence that may be proper; ~~or by a fine not exceeding one hundred dollars--($100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel~~

(d) the witness to pay the costs of the proceeding.

(5) failure to comply with the requirements of subsections (4)(a), (b), or (c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both."

Section 16. Section 74-611, R.C.M. 1947, is amended to read as follows:

"74-611. Penalties. ~~(a)~~(1) Any person who ~~shall~~ knowingly ~~violate any~~ violates a provision of this act or ~~engage~~ engages in the business of a sales finance company in this state without a license ~~therefor~~ as provided in this act ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than ~~five hundred dollars ($500)~~ or by imprisonment for not more than ~~six (6)~~ months, or both.

~~(b)~~(2) Any person violating ~~sections~~ 74-607 ~~to~~ through 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance ~~charge~~, delinquency, or collection charge on the contract."

Section 17. Repealer. Section 29-207, R.C.M. 1947, is repealed.

-End-

January 8, 1977
11:00 a.m.

MINUTES OF THE MEETING

BUSINESS AND INDUSTRY COMMITTEE

MONTANA STATE SENATE

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 11:00 a.m.

ROLL CALL: All members were present with the exception of Senator Kolstad who was excused.

Chairman Hazelbaker introduced Dave Cogley, representing the Code Commissioner, who drafted Senate Bills 4, 5, and 6. Mr. Cogley state that he has been working on the recodification project ever since the last session. The purpose of recodification is to make it simpler fo a person looking for a particular law or particular area of law. If they can find the general area of law then it is easier to find the l they are looking for. When laws are introduced and go through a sess there is always a possibility of duplication. Also, laws tend to bec obsolete after a number of years. One of his major responsibilities to rearrange the laws in a more logical fashion.

Mr. Cogley stated that they have contacted all of those concerned, legal offices and persons who are interested in this area of the law, and Government offices that would be affected and they think they hav their full concurrence on the things that they have done, such as cleaned up garbled language, etc.

Chairman Hazelbaker stated that before we started looking at the bill in the back of each bill attached is a green sheet of paper with all of the explanations and changes that have been done. He stated this helpful if they would like to follow it.

SENATE BILL 4, "An Act For The General Revision and Clarification of Laws Relating to Trade and Commerce." Mr. Cogley pointed out changes in wording and substitutions which he had made, such as substituting the words "auction sales" for other wording on page 8, line 15. Afte some discussion of the bill, Senator Lowe moved that Senate Bill 4 Do Pass. All were in favor.

SENATE BILL 5, "An Act to Generally Revise and Clarify the Laws Relat to Credit Transactions and Relationships." Mr. Cogley stated that he made some changes in this bill too. Section 3, page 3, lines 15 and were changed because it did not make sense the way it was written in the codes. After some discussion, Senator Devine moved that Senate B Do Pass. All were in favor.

STANDING COMMITTEE REPORT

January 8 19 77

MR. President

We, your committee on Business and Industry

having had under consideration SENATE Bill No. 5

Respectfully report as follows: That SENATE Bill No. 5

DO PASS

FRANK W. HAZELBAKER, Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

March 4, 1977

The meeting was called to order at 10:15 a.m., in Room 434, with all members present with the exception of Reps. Scully and Bradley.

Senate Bill No. 4, 5, and 6 were discussed. Sen. Hazelbaker, sponsor, gave the reason for the recodification of these bills. He then introduced Mr. Dave Cogley. Mr. Cogley said it would be easier if he could just answer any questions relative to the bills rather than going through each one.

Sen. Hazelbaker stated in closing that all interested parties are in concurrence with the bills.

There were no proponents, opponents or questions from the committee.

Senate Bill No. 84 was discussed. Sen. Lowe, sponsor, stated that the bill dealt with petroleum and is a complete redraft of Chapter 2. The bill clearly defines liquified petroleum dealer.

Mr. Delano stated that he would answer any questions relative to the bill (testimony attached).

Rep. Aageson asked Mr. Delano why the correction of fuel sales is at 60° Fahrenheit. Mr. Delano replied by stating that the average temperature in Montana is 43°.

Senate Bill No. 218 was discussed. Sen. Lowe, sponsor, said the bill had come from the Insurance Commissioners office. The insurance consultants should come under a certain designation or they should be required to pass an examination. Also, they could be certified as a public insurance consultant. The examination given by Drake University would cost $100 per question. There are approximately 20 questions which include 10 for health and life--10 for property and casualty. The number of applicants vary from 8 to 10 per year. The fee for taking second or subsequent examinations shall not exceed $50.

Mr. Chip Urdman expressed his support in the bill.

There were no opponents.

Sen. Lowe stated that the applicants would take the test in the office and the results would be sent to Drake University for correction.

The committee then went into executive session.

Rep. Aageson moved that Senate Bill No. 4 BE CONCURRED IN. It was concurred in by a unanimous vote.

Rep. Metcalf moved that Senate Bill No. 5 BE CONCURRED. The motion was carried unanimously.

SENATE BILL NO. 5

INTRODUCED BY HAZELBAKER

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~~(2)~~(b) willful failure to comply with any provision of this act relating to retail installment contracts;

~~(3)~~(c) defrauding any retail buyer to the buyer's damage;

~~(4)~~(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

~~(b)~~(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation, or any member of a licensed partnership, has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

~~(c)~~(3) (a) A license may not be denied, suspended, or revoked, except after hearing. The department shall give the licensee at least ~~ten (10)~~ days' written notice, in the form of an order to show cause, of the time and place of the hearing by ~~registered~~ certified mail addressed to the licensee's principal place of business in this state ~~of the licensee~~. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until ~~thirty (30)~~ days after written notice has been forwarded by ~~registered~~ certified mail to the licensee at ~~the~~ his principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee."

Section 15. Section 74-606, R.C.M. 1947, is amended to read as follows:

"74-606. Powers of department. ~~(a)~~(1) The department shall adopt rules necessary to carry out the intent and purposes of this act. All rules of general application shall be filed in the office of the department. A copy of every rule shall be mailed to each licensee, postage prepaid, at least ~~fifteen--(15)~~ days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt him from the duty of compliance with those rules lawfully adopted under the provisions of this section.

~~(b)~~(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this act. The department may administer oaths and affirmations to a person whose testimony is required.

~~(c)~~(3) If a person refuses to obey a subpoena, or to give testimony, or to produce evidence as required by it, a judge of the district court of the county in which the

licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department ~~and~~ to give testimony, ~~and~~ to produce evidence as may be required ~~by--it~~. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

~~(d)~~(4) If a person served with a subpoena refuses to obey it, or to give testimony, or ~~to~~ produce evidence as required by it, the department may apply to the judge of the court issuing the subpoena for an ~~attachment against~~ arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an ~~attachment~~ arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person, and, upon his being brought before the judge, proceed to a hearing of the case. The judge may ~~enforce~~ compel:

(a) obedience to the subpoena, ~~;~~ and

(b) the answering of any question, ~~;~~ and

(c) the production of any evidence that may be proper; ~~or by a fine, not exceeding one hundred dollars ($100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel~~

(d) the witness to pay the costs of the proceeding.

(2) Failure to comply with the requirements of subsections (4)(a), (b), or (c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both."

Section 16. Section 74-611, R.C.M. 1947, is amended to read as follows:

"74-611. Penalties. ~~(1)~~(1) Any person who ~~shall~~ knowingly ~~violate any~~ violates a provision of this act or ~~engage~~ engages in the business of a sales finance company in this state without a license ~~therefor~~ as provided in this act ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than ~~five hundred dollars ($500)~~ or by imprisonment for not more than ~~six (6)~~ months, or both.

~~(2)~~(2) Any person violating ~~sections~~ 74-607 ~~to~~ through 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance ~~charge~~, delinquency, or collection charge on the contract."

Section 17. Repealer. Section 29-207, R.C.M. 1947, is repealed.

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